STATE OF SOUTH CAROLINA
BEFORE THE PUBLIC SERVICE COMMISSION
DOCKET NOS. 2017-207-E; 2017-305-E; 2017-370-E

In the Matter of: Friends of the Earth and Sierra Club, Complainant/Petitioner v. South Carolina Electric & Gas Company, Defendant/Respondent In the Matter of: Request of the Office of Regulatory Staff for Rate Relief to South Carolina Electric & Gas Company's Rates Pursuant to S.C. Code Ann. § 58-27-920 In the Matter of: Joint Application and Petition of South Carolina Electric & Gas Company and Dominion Energy, Incorporated for Review and Approval of a Proposed Business Combination between SCANA Corporation and Dominion Energy, Incorporated, as May Be Required, and for a Prudency Determination Regarding the Abandonment of the V.C. Summer Units 2 & 3 Project and Associated Customer Benefits and Cost Recovery Plans	**AARP'S PETITION FOR REHEARING OR RECONSIDERATION**

INTRODUCTION

Pursuant to S.C. Code § 58-27-2150 and 10 S.C. Code Ann. Regs. 103-825, **AARP**, an intervenor in these consolidated cases, hereby respectfully petitions the Public Service Commission of South Carolina ("Commission") to rehear or reconsider its findings and conclusions in December 21, 2018 Order No. 2018-804 ("Order"), in the respects explained herein. Of utmost importance to preserving consumer rights is the argument outlined in Paragraph 2 below, regarding the Order's failure to make a finding of "imprudence". The legal issues invoked by this order are significant enough to merit the Commission's serious consideration, and thus AARP further requests an opportunity for oral argument on the points for rehearing and reconsideration raised in this petition.

From an overall consumer perspective, the Order is a profound disappointment in that it would place the lion's share of the burden (roughly $5 Billion) on the backs of ratepayers for a power plant that will never serve them, while the utility's investors who are responsible for the financial quagmire would be held accountable for only a fraction of the costs associated with this worthless asset. The Order is far from what AARP would believe to be a "just and reasonable" ruling, especially given the undisputed fact that ratepayers were not responsible for making any of the unfortunate decisions that led to the costs associated with this (not "used and useful") investment, and the overwhelming evidence of imprudent and unreasonable SCE&G decision-making that has been preserved in the record of these cases.

By comparison, the ORS Optimal Plan would require consumers to ultimately pay only $3.2 Billion in Project costs, in recognition of SCE&G's imprudence and fraudulent behavior. AARP's expert testimony supports a disallowance that would have consumers pay no more than the $2.2 Billion in Project costs that already have been charged through electric rates, and other parties presented evidence supporting a recommendation that ratepayers pay nothing for this Project. Rather than balance the interests, the Commission's Order adopts the most extremely anti-consumer alternative proposed by any of the various parties participating in these cases.

The Commission's overriding legal obligation is to ensure "just and reasonable" rates prospectively, by protecting the ratepaying public from paying for imprudent, unreasonable, and/or fraudulently incurred utility costs, as codified in South Carolina law.[1] To be considered just and reasonable, a Commission order is expected to be the result of an even-handed balancing between utility *shareholder* interests and utility *consumer* interests. After nearly a month of evidentiary hearings, and a record full of competent and substantial evidence of utility imprudence, the Order does not reach a single determination proposed by consumer intervenors. The Order finds that the abandonment of the V.C. Summer power plant project ("NND" or "Project") was "prudent", but largely ignores the overwhelming evidence regarding the imprudent decisions leading up to the abandonment.

[1] S.C Code Ann. Section 58-27-810: "Every rate made, demanded, or received by any electric utility or by any two or more electric utilities jointly shall be just and reasonable."

The Order applies a cutoff date of March 12, 2015 for costs associated with the abandoned Project; however, it fails to apply the appropriate "imprudence" standard in making even this minimal disallowance. This is an abrogation of the law. And as explained below, this legal error threatens to expose consumers to even further unreasonable rate increases down the road connected to a project which is neither used nor useful in providing service. In addition, the Commission's Order fails to order a refund of the profits that already have been collected on these post-March 12, 2015 costs.

The Order also contains no mention of the public testimony received at the Commission at its three local public hearings. The Order contains no explicit findings of fact to indicate if and how that public testimony factored in any way into the Commission's determinations in this proceeding.

Finally, the Order's approval of the merger contains no enforceable conditions that would require Dominion Energy to provide protections for the utility's most vulnerable consumers.

Unless the Commission takes this opportunity to rehear and reconsider its Order, it will be difficult for the Commission to avoid serious public cynicism regarding its ability to adequately protect consumers from the irresponsible actions of the investors and managers for utilities that it is charged with regulating. Furthermore, $5 billion will be taken out of the South Carolina economy due to an unbalanced decision that falls outside of the zone of reasonableness.

ARGUMENT

The following are errors of fact and law contained within the December 21, 2018 Order (Order No. 2018-804) which AARP asks the Commission to rehear and reconsider:

1. The Commission erred in approving Project costs for recovery through electric rates pursuant to the Baseload Review Act, ("BLRA"), S.C. Code Ann. Sections 58-33-210, et seq., which, on its face and as applied in the Order, would take money from ratepayers and give it to investors of a private company for a private use for a power plant that is abandoned and which is not, and never will be, "used and useful" in producing utility service to consumers.The Commission's Order is thus contrary to the public interest and in violation of Article I, Section 13(A) of the South Carolina Constitution. Furthermore, previous BLRA proceedings did not

grant AARP a full and fair opportunity to challenge the prudency of the Project in violation of constitutional due process.[2]

2. The Commission's Order contains a serious error in that it fails to make any "prudency determinations associated with costs expended for the NND Project" (even as such a finding was specifically requested in the Joint Applicants' Application in Docket 2017-370-E). Rather, the Order merely states that: "The Commission finds this schedule, as updated as ordered above, constitutes an appropriate schedule for capital costs for the Project in abandonment, under S.C. Code Ann. §58-33-270(E) and S.C. Code Ann. 58-33-280(K)."[3] The Order's failure to make any specific and explicit determinations of imprudence regarding the actions and inactions of SCE&G in its role in supervising the planning, scheduling, costs and construction of VC Summer Units 2 and 3 after March 12, 2015 puts ratepayers at risk that these costs may be requested by the utility in future rate cases.

In completely bypassing the need to rule whether such costs are imprudent, the Order fatally ignores Act 258's definitions of "prudence" and "imprudence" as related to the determination of allowable costs for the Project. Act 258 is the current law and should be applied. The Commission must clarify this essential legal issue, or risk a finding that such costs are presumed to be prudent and thus are recoverable, eliminating even this one small protection for ratepayers.

The failure of the Commission to address the prudence or imprudence for the disallowed Project costs creates substantial risk that the Commission's Order could not survive an appeal. Absent a specific and explicit finding that SCE&G made decisions or acted in an "imprudent" manner which led to significant and material misstatements of Project estimated costs and completion dates in filings to the Commission, the law presumes all costs are prudent:

> Without limiting the effect of Section 58-33-275(A), recovery of capital costs and the utility's cost of capital associated with them may be disallowed only to the extent that the failure by the utility to anticipate or avoid the allegedly imprudent costs, or to minimize the magnitude of the costs, was imprudent considering the information available at the time that the utility could have acted to avoid or minimize the costs. The commission shall order the amortization and recovery

[2] See AARP's Prehearing Brief, October 26, 2018.
[3] Order, p. 44.

> through rates of the investment in the abandoned plant as part of an order adjusting rates under this article. (emphasis added). [4]

There has been no settlement among the parties regarding the recoverability of abandonment costs in this proceeding, and in fact, various parties have different positions as to the amount of abandonment costs that should be found to be imprudent and thus disallowed.[5] The Commission errs when it states that "[s]such an agreement makes claims of imprudent expenditures after that date moot." Order, pg.18. No such agreement actually exists among the parties, and thus the sole disallowance contained in the Order is tenuously balanced upon a false premise and is not legally supportable.

The date of March 12, 2015, is supported by substantial evidence offered into the record by the Office of the Regulatory Staff ("ORS"), and the Order does acknowledge that it is ". . . beyond dispute that SCE&G failed to disclose any iteration of the Bechtel Report to ORS or the Commission." Order, pg. 18. The public deserves to have, and the Commission is legally obligated to have, the issue of prudence addressed without baseless sidestepping. The Order should be reconsidered and revised with a clear and explicit finding, based upon the record, that Project costs incurred after a certain date[6] are disallowed due to *imprudence*.[7]

Commissioner Ervin's Concurrence acknowledges this legal deficiency and recommends a specific finding of imprudence that would provide the necessary legal support for the March 12, 2015 disallowance that is suggested in the Order.[8] Leaving the Order unrevised would leave ratepayers exposed to potential future harm related to post-March 12, 2015 Project costs.

3. Furthermore, the Order disallows recovery of all Project costs incurred after March 12, 2015, but inconsistently allows SCE&G to retain revised rates collected from customers for Project costs incurred after March 12, 2015. This factual and legal incongruity in the Commission Order places SCE&G electric customers in the position of paying through revised rates the cost of capital associated with disallowed capital costs.

---

[4] S.C Code Ann. Section 58-33-280(K)[emphasis added].
[5] See p. 2 above.
[6] As explained below, AARP believes that cutoff date should be at least by May 2014, if not earlier, although the Order uses the date of March 15, 2015.
[7] AARP hereby adopts and incorporates into this petition all of the arguments lodged on this same point by ORS in its December 28, 2018 Petition for Rehearing Reconsideration and Clarification, pp. 4-13.
[8] Commissioner Ervin's Concurrence, pp. 114-115.

Section 58-33-280 (K) expressly authorizes the Commission to disallow *both* capital costs and cost of capital where imprudence can be shown. Section 58-33-275(A) permits the recovery of capital costs only so long as the plant is constructed or is being constructed within the Commission approved construction schedule including contingencies and the approved capital cost estimates including specified contingencies. The Order acknowledges that SCE&G failed to disclose material information. Additionally, SCE&G failed to update its capital cost estimates in its 2015 Revised Rates filings and failed to disclose in the 2016 Revised Rates filings that an assessment of the schedule completion dates revealed the dates were well beyond the dates approved by the Commission, including contingencies, as required by S.C. Code Ann. §58-33-280(B).[9]

Ratepayers deserve to be refunded all of the costs associated with the disallowed post-March 12, 2015 Project costs. If it is imprudent (or even simply unreasonable) to charge those costs to consumers, it was unreasonable to charge consumers a return on those costs.

4. The Commission's Order errs by failing to include sufficiently explicit findings of fact and conclusions of law, and is against the weight of the competent and reliable evidence contained in the record on these points:

a. The Order barely mentions the evidence presented by AARP's expert witness Mr. Scott Rubin and it does not address the reliability of his testimony. Specifically, the Order fails to address the reliable, competent and substantial evidence contained in Mr. Rubin's testimony that SCE&G's imprudence actually began much earlier than 2015. Mr. Rubin's testimony explains numerous clear warning signs were known by SCE&G management during 2013 and 2014. He testified that those warning signs should have led to a prudent decision by the utility to abandon the Project much sooner than 2015. By *at least May 2014,* a prudent utility would have determined that the Project had become uneconomic and taken actions to stop the "bleeding". It is arbitrary and unfair for the Commission to make ratepayers responsible for the unnecessary extra cost incurred between May 2014 and March 2015. The difference between a prudent utility that would have stopped the Project in May 2014 and the management of the utility

[9] AARP hereby adopts and incorporates into this petition the arguments lodged on this point by ORS in its December 28, 2018 Petition for Rehearing Reconsideration and Clarification, pp. 14-17.

stopping the Project in March 2015 would have resulted in additional savings of *over a billion dollars*. As explained below, the significant construction problems outlined in the Bechtel report were present and knowable by SCE&G executives much earlier than 2015, and thus the ORS Optimal Plan does not go far enough to protect consumers from the utility's imprudence by recommending a cutoff date no sooner than March 12, 2015.

The Order does not contain any findings of fact addressing Santee Cooper's attempt to sell a portion of its 45% share in the NND Project, beginning in 2011 and continuing through 2012 and into 2013, and failing to find another utility buyer for any portion of the project. A 2013 memo revealed that all other responding utilities thought the cost for the Project was too high, that the benefits were too small, and that the risks were too great.[10] Even SCE&G was unwilling to commit to any more construction risk for the NND Project.[11] The record is exceedingly clear that numerous other utilities in the same region of the country, with the same general knowledge, had an opportunity to buy into the NND Project during the 2011-2013 timeframe, but declined to invest anything in it. That lack of interest should have provided a clear indication to a prudent utility that the Project was not economical and that it was not prudent to invest any more capital into it.[12]

b. AARP agrees with the Commission that SCE&G's attempts to hide the Bechtel report from the regulators and from the public was a failure that, in and of itself, demands a disallowance. But the Commission erred in failing to acknowledge that SCE&G's outrageous and fraudulent behavior regarding this report stretches even further back in time of the (mis)management of the Project. The undisputed evidentiary record supports that it was imprudent for SCE&G to delay the retention of an independent industry expert such as the Bechtel Corporation as long as it did. The record contains a report from the Institute of Nuclear Power Operations ("INPO"), issued July 2, 2013[13], recommending an outside evaluation of the likely schedule and cost of the project by independent industry experts which, *had SCE&G followed this advice on a timely basis*, would likely have led to cancellation of the Project.[14] Instead, SCE&G waited ***15 months later*** to get Bechtel Corporation under contract to perform that independent

[10] See Rubin prepared Direct Responsive Testimony (pp. 13-17).
[11] Rubin Direct, pp. 13-14.
[12] *Id*., p. 15. AARP hereby incorporates the arguments from its Closing Brief, pp. 7-8.
[13] Hearing Exhibit 18.
[14] *See* Tr. Vol. 2, 344:5-20.

review of the Project.[15] No witness even attempted to explain the reason for such a long delay. Had SCE&G promptly followed the recommendation of the INPO, then the utility would have had the benefit of Bechtel's analysis well over a year earlier. And then if the utility had been behaving in a prudent manner, it could have taken steps to correct the identified problems or to cancel the Project at an earlier date, saving over a billion dollars. The Commission should re-examine the record on this point and reconsider the extent of its disallowance of Project costs.

c. The Commission's Order contains no mention of the public testimony received at the Commission during its three local public hearings in October 2018. The Order contains no explicit findings of fact to indicate if and how that public testimony factored in any way into the Commission's determinations in this proceeding. It is unjust and unreasonable for the Commission to fail to make explicit findings regarding testimony taken into the record by the very consumers who are being asked to pay *billions* for a power plant that will never supply them electric power.

5. Finally, the Order's approval of the merger contains no enforceable conditions that would require Dominion Energy to provide protections for the utility's most vulnerable consumers. It is unjust and unreasonable for the Commission to adopt none of the proposed conditions suggested by the parties to ameliorate the impact of the merger plan upon low-income customers, low usage customers, and customers with special needs related to the access to service. Several commissioners discussed the importance of protecting such vulnerable customers, although the Order contains no enforceable provisions to ensure that such customers will be protected under the terms of the merger.

CONCLUSION

WHEREFORE, for the foregoing reasons, AARP, on behalf of the residential electric consumers who will be adversely affected by the December 21, 2018 Order, hereby urges the Commission to rehear and reconsider said Order, to correct the factual and legal errors explained herein, and to provide such other and further relief as is necessary to protect the ratepaying public, after giving the parties an opportunity for oral argument on such identified errors.

[15] See AARP cross-examination of Gary Jones. (Not to mention that when SCE&G finally got around to contracting with Bechtel, it chose a roundabout way to hire the firm, using outside counsel to pay for the review, with the goal of hiding the results of the Bechtel review.)

Respectfully Submitted,

SOUTH CAROLINA APPLESEED LEGAL JUSTICE CENTER

s/ Adam Protheroe
By: Adam Protheroe
S.C. Bar No. 78442
P.O. Box 7187
Columbia, SC 29202
Office – (803) 779-1113 ext. 106
Fax – (803) 779-5951
adam@scjustice.org

John B. Coffman
MoBar# 36591 (Admitted *Pro Hac Vice*)
John B. Coffman, LLC
871 Tuxedo Blvd.
St. Louis, MO 63119-2044
Ph: (573) 424-6779
E-mail: john@johncoffman.net

Attorneys for AARP

CERTIFICATE OF SERVICE

I certify that on December 31, 2018 a copy of the foregoing was served upon all parties to these consolidated dockets by electronic mail.

s/ Adam Protheroe